

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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ARTHUR ALAN WOLK,	:
	:
Plaintiff	:
	:
v.	: CIVIL ACTION NO. 02-2909
	:
UNITED STATES AIR FORCE,	:
	:
Defendant	:
-----x	

REPLY BRIEF IN SUPPORT OF
MOTION OF UNITED STATES AIR FORCE TO
TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

In his brief in opposition to the Government's motion to dismiss, plaintiff references a Freedom of Information Act ("FOIA) request which he claims to have sent, on October 9, 2001, to Lt. Col. James T. Hedgepeth at the Randolph Air Force Base in Texas. Attached hereto is the Declaration of Angelica Cordero, the FOIA Manager at Randolph, stating that she has conducted a further search of the FOIA database maintained by her office, for the period January 1, 1998 to July 8, 2002, and has found no requests involving either the name "Wolk" or "Coogan".¹ This would include Mr. Wolk's alleged letter of October 9, 2001.

Further, Ms. Cordero has searched electronically stored responses to FOIA requests by the Randolph Air Force base and has found nothing which mentions either "Wolk" or "Coogan", id. In short, putting to one side the issue of whether Mr. Wolk's letter of October 9, 2001 was ever received, the Randolph Air Force base

¹ The attached Declaration of Lt. Col. Hedgepeth shows that it is his regular practice to forward all FOIA requests to Ms. Cordero.

has nothing responsive to it in any event.

Finally, Ms. Cordero reviewed documentation relating to the release of information in connection with litigation, whether or not the request was made pursuant to FOIA, and has found no release of information pertaining to Mr. Coogan, except to Mr. Wolk himself, on January 19, 1999, pursuant to a subpoena from the United States District Court for the Southern District of California, id.²

² In what appears to be an excerpt from a brief in a different case entirely, plaintiff urges the Court to deny summary judgment, pending an opportunity for him to take discovery, Br. at 4-5. This, however, is not a Rule 56 motion, and, in all events, discovery in FOIA cases is very rare. See, e.g., Public Citizens Health Research Group v. FDA, 997 F.Supp. 56, 72 (D.D.C. 1998) ("Discovery is to be sparingly granted in FOIA actions").

CONCLUSION

For the foregoing reasons, the Government respectfully asks that this case be dismissed without prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify this 12th day of July, 2002, that a copy of the foregoing Reply Brief in Support of Motion of United States Air Force to Dismiss for Lack of Subject Matter Jurisdiction was served by hand on:

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